IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2126 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT
===
1.   Whether Reporters of Local Papers may be allowed
        to see the judgements? Yes.

2.   To be referred to the Reporter or not? No.

3.   Whether Their Lordships wish to see the fair copy
        of the judgement?   No.

4.   Whether this case involves a substantial question
        of law as to the interpretation of the Constitution
        of India, 1950 of any Order made thereunder? No.

5.   Whether it is to be circulated to the Civil Judge?
                                                   No.

        DIVISIONAL CONTROLLER
Versus
        MOHMED R VORA

        Appearance:
            MR YS LAKHANI for Petitioner
            Mr.H.K.Rathod for the respondent

        CORAM : MR.JUSTICE S.D.PANDIT
        Date of decision: 14/07/98

ORAL JUDGEMENT

         Rule. Mr.   H.K.Rathod waives service of notice
        of Rule on behalf of the respondent.

        2. The Divisional Controller, Gujarat State Road
        Transport Corporation(GSRTC) has filed the present SCA to
        challenge the award passed by the Labour Court, Nadiad on
        3.3.98.

3. The respondent Mohmed Vora was working as a driver with the present petitioner and when he was attached to Khambhat depot of the petitioner, he remained absent without previous permission from his superiors between 11.8.92 and 16.8.92 and again from 18.9.92 to 18.11.92. Because of the said absence the department decided to hold a departmental inquiry against him. In the said departmental inquiry it was found that he has remained absent from his duty without prior permission of his superiors and therefore, he has committed misconduct. Consequently he was dismissed from service by an order dated 27.4.1997. Therefore, the respondent raised an industrial dispute which was referred to the Labour Court, Nadiad being Reference No.88 of 1994. The Labour Court found that though misconduct of the respondent was proved, the punishment of dismissal from service was not in consonance with the misconduct committed by him and that the same was excessive and disproportionate with the misconduct committed by the delinquent and therefore, he set aside the said punishment and directed to reinstate the respondent with 25 percent back wages. hence the GSRTC has come before this court by way of this petition.

4. The respondent was working as a driver and he was admittedly absent from his duties without prior permission or sanction of leave to him. It was the contention of the respondent that he has remained absent on account of his ill health. No doubt he had not produced any medical evidence to support that claim of him; but merely because he was absent from his duties it could not be said that he deserves the extreme penalty of dismissal from service. The Labour Court has taken into consideration his previous misconduct as well as explanation given by him and has come to the conclusion that the punishment awarded to him is excessive and disproportionate to the misconduct committed by the delinquent. I am considering the order of Labour Court in exercise of the powers under Articles 226/227 of the Constitution of India. From the material on record it is not possible to hold that said conclusion arrived at by the Labour Court is either perverse or grossly erroneous so as to interfere with the same by exercising powers under Articles 226/227 of the Constitution of India. Therefore, I do not find any reason to interfere with the said finding of the Labour Court.

5. Learned advocate for the petitioner urged before me that there is in fact no punishment to the workman.

This is not correct. Though the delinquent has committed misconduct, Labour Court has denied 75 percent of wages to the delinquent-respondent. This denial of wages is a punishment awarded to him.   The denial of wages is for nearly for 3 years. Denial of 75 percent wages for three years is quite adequate and sufficient punishment to the delinquent in view of the misconduct committed by him. Therefore, in the circumstances, I hold that present petition will have to be dismissed and the same is accordingly dismissed. Rule is discharged. No order as to costs.

                              (S.D.Pandit.J)